

REMARKS

Claims 34-51 are pending. Claims 34-51 are new, and previous claims 1-33 are canceled.

In an Official Action dated June 12, 2007, previous claims 8, 9, 11-20, 22-29 and 31-33 were rejected under 35 U.S.C. § 101, and all claims were rejected under 35 U.S.C. §§ 102 and 103. While the rejections are moot in view of Applicant's cancellation of claims 1-33, the rationale of various of the rejections is addressed below to explain why new claims 34-51 would not be subject to similar rejections.

Interview Summary

Applicants would like to thank the Examiner for the courtesy of a telephonic interview conducted on Thursday, Aug. 30, 2007. At the interview, the undersigned and Examiner Smith discussed the rejection under 35 U.S.C. § 101, and Applicants suggested reciting "computer readable storage media" as recited in the claims above.

Rejection of Claims 8, 9, 11-20, 22-29 and 31-33 Under 35 U.S.C. § 101

The above claims were rejected because the specification defines "computer readable media" as including a modulated data signal. Applicants direct the Examiner to paragraph 0037, which provides computer storage media and communication media. To avoid a similar objection to new claims 46-51, Applicants have recited "computer readable storage media" thereby limiting the claim to such embodiments. Applicants note that the issue of whether signals are patent eligible is currently under review at the Federal Circuit, in the case of *In Re Nuijten*. Applicants reserve the right to change claims 46-51 to the broader "computer readable media" language should the Federal Circuit hold that signals are patent eligible subject matter.

Rejection of All Claims Under 35 U.S.C. §§ 102 and 103

Previous claims 1-33 were rejected as either anticipated by U.S. Pat. 6,473,425, or as obvious over Bellaton in view of either U.S. Pat. 6,009,103 (Woundy) or U.S. Pat. 6,574,668

(Gubbi). Also considered relevant were references referred to on pgs. 15-16 of the Official Action.

Applicants respectfully submit that new claims 34-51 are novel and non-obvious over the references of record, at least because they contain subject matter directed to novel error correction procedures not disclosed in the references. Robust fault tolerance is particularly important in operating system downloads, for which the invention is particularly suited as disclosed in Applicants specification. For example, as recited in claim 34:

discarding by said electronic device at least one data packet having a sequence identifier that is previous to an expected sequence identifier

Claims 35 and 36 also contain novel error correction aspects, which will be recognized as reflected in analogous elements of claims 40 and 46. For example, claim 40 includes the following novel aspects:

receiving by said server a negative acknowledgement packet from said electronic device, said negative acknowledgement including a sequence number of a next expected data packet;
sending by said server to said electronic device a subsequent plurality of sequentially ordered data packets, wherein the first of said subsequent plurality is said next expected data packet;

Applicants request reconsideration of the application in view of newly added claims 34-51.

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